



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,998	01/22/2004	Rebecca M. Minard	49339-C	6201

21874 7590 02/22/2008  
EDWARDS ANGELL PALMER & DODGE LLP  
P.O. BOX 55874  
BOSTON, MA 02205

EXAMINER
----------

LEVY, NEIL S

ART UNIT	PAPER NUMBER
----------	--------------

1615

MAIL DATE	DELIVERY MODE
-----------	---------------

02/22/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/762,998	<b>Applicant(s)</b> MINARD ET AL.	
	<b>Examiner</b> NEIL LEVY	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 128, 130, 132, 135-147, 149-151, 154-165 and 168-182 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 128, 130-132, 135-147, 149-151, 154-165 and 168-179 is/are rejected.
- 7) ☒ Claim(s) 180-182 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

Claim 128, 141, 159, 165, 172, 174, 161 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 128, 147, 165-all are unclear as to the 5%; claim 165 is unclear-each section can contain two ingredients, the total weight within 5%. It is unclear how to seal the packages prior to opening them (claim 172) and if all other claims are to open packages. Claim 174 ends with chemical, no longer recited in claim 165 or 147; there is no antecedent basis for "chemical entity" although all the ingredients are chemicals. The language is unclear as to how much the package weighs, how much each section weighs, and how many ingredients are in each section.

Claim 128, 130-132, 135-144, 147, 149-151, 154-162, 165, 168-175, 178, 179 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB 1474931 with teaching of MERCK '67.

Two or more distinct edible feed materials-liver, heart, bat, bran, vitamin (page 7, lines 70-81; Figures 1, 2).

The liver, and heart constitute protein supplements. Page 2, lines 12-18 show the intent is to meet the feed requirements of individual animals; the instant specified dogs.

Claim 128, 130-132, 135-144, 147, 149-151, 154-162, 165, 168-175, 178, 179 stand rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1474931 with teaching of MERCK '67 in view of Matsuura et al EP 0609056

Claim 128, 145, 146, 147, 163, 164, 165, 176, 177 rejected under 35 U.S.C. 103(a) as being unpatentable over G B - 1474931 and Magnant et al- 5787839 and Pedigree as a teaching reference, & further in view of Merck '67.

Given the recent KSR (2007 supreme court decision in KSR V TELEFLEX @ 82 USPQ 2d @ 1385) determinations to allow for the practitioner in the art to use common sense, and test with expectation of success; it would have been well within the purview of the artisan to prepare a specific diet of a combination of required and desired feed ingredients to feed a specific, selected dog from a daily container of multi-compartmentalized packages.

### ***Response to Arguments***

Applicant's arguments filed 12/-04/07 have been fully considered but they are not persuasive. Applicant's arguments are directed at the lack of language in the cited reference to feeding a specific dog selected materials for that dog. The 132 declaration is seen as indicating the convenience of applicant's marketing strategy is within the means of applicant's clientele. We do not see the declaration as pointing to unobviousness of the invention as claimed. The prior art provides diets for individual dogs, the cited art points to the feed ingredients to select from for animals with given, specific syndromes and needs, and the references of record show the packaging claimed was old; whether intended for a specific animal, be it dog or horse.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

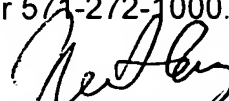
Art Unit: 1615

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY

NEIL S. LEVY  
PRIMARY EXAMINER